

August 9, 2007

Ms. Anna Strimel
536 Main Street
Dover, DE 19904

Re: **Freedom of Information Act Complaint
 Against Town of Cheswold**

Dear Ms. Strimel:

On June 12, 2007, our Office received your complaint alleging that the Town of Cheswold ("the Town") violated the open meeting requirements of the Freedom of Information Act, 29 *Del. C.* Chapter 100 ("FOIA"), by meeting in executive session on May 7, 2007 to discuss an "annexation agreement for a new development (Saratoga) and setting the Impact fees for that development" and then calling "the developers and builders of that development into the executive session."

By letter dated June 13, 2007, our Office asked the Town to respond in writing to your complaint by June 22, 2007. Our Office received the Town's response by facsimile on June 20, 2007.

According to the Town, the "council took no action relating to the Saratoga development at the May 7, 2007 meeting." The Town provided our Office with a copy of the agenda and minutes of the May 7, 2007 meeting. The agenda did not list for public discussion the Saratoga development. The minutes of the meeting also do not reflect any discussion of that development during the public session. Both the agenda and the minutes reflect that the Council went into executive session to

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discuss the "status of pending litigation."

By letter dated June 25, 2007, our Office asked the Town for a copy of the minutes of the May 7, 2007 executive session for our *in camera* review. After a reminder letter on July 12, 2007, our Office received those minutes on July 18, 2007.

RELEVANT STATUTES

FOIA authorizes a public body to meet in executive session for "strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body." 29 Del. C. §10004(b)(4).

LEGAL AUTHORITY

Our Office reviewed *in camera* the minutes of the Town's May 7, 2007 executive session. The Town Council did not discuss, as you allege, an annexation agreement for a new development. Rather, the minutes of that executive session reflect that the Council discussed with the Town Solicitor the current status of four lawsuits against the Town.

Our Office determines that the Town met in executive session on May 7, 2007 for a purpose authorized by FOIA: to discuss pending litigation. Discussion of those lawsuits in public might have compromised the Town's litigation strategy and risk exposure in the litigation.

CONCLUSION

For the foregoing reasons, our Office determines that the Town did not violate the open meeting requirements of FOIA by meeting in executive session on May 7, 2007. The Town met in

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executive session to discuss pending litigation, a matter authorized by FOIA for private discussion.

Very truly yours,

W. Michael Tupman, Esquire
Deputy Attorney General

APPROVED

Lawrence W. Lewis, Esquire
State Solicitor

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cc: The Honorable Joseph R. Biden, III
Attorney General

Richard S. Gebelein, Esquire
Chief Deputy Attorney General

Keith R. Brady, Esquire
Assistant State Solicitor

Ronald G. Poliquin, Esquire
Town Solicitor

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